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Situation of human rights in the Democratic People's Republic of Korea

Note by the Secretary-General**

Summary

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, Marzuki Darusman, in accordance with Assembly resolution 69/188.

The report provides an assessment of the latest developments on a number of thematic areas that were pointed out by the commission of inquiry on human rights in the Democratic People's Republic of Korea as requiring particular attention owing to the serious nature of the violations committed in those areas, namely summary executions, enforced disappearances, arbitrary detention, discrimination and trafficking. Whereas in the report it is noted that a few positive developments have taken place in the context of the momentum that was created by the commission of inquiry, grave violations continue to be committed on a large scale and particularly affect the most vulnerable groups, including prisoners, migrant workers and persons with disabilities. In the report the international community is called upon to step up efforts to protect the population of the Democratic People's Republic of Korea and hold the Government accountable for those gross violations. The Government of the Democratic People's Republic of Korea is also urged to take immediate and long-term actions to redress the situation and abide by its international human rights obligations.

* A/70/150.
** Late submission due to consultations with relevant stakeholders.

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Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea

I. Introduction

1. The present report is submitted to the General Assembly by the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea pursuant to General Assembly resolution 69/188.

2. In the present report, the Special Rapporteur takes a people-centred approach, as he deems it important to continue highlighting the dire plight of women, men and children victims of long-standing and ongoing systematic, widespread and gross human rights violations by the Government of the Democratic People's Republic of Korea, as identified by the commission of inquiry on the human rights situation in the country in its report issued in February 2014 (A/HRC/25/63). Regrettably, the situation remains the same, despite the grave concerns reiterated by the international community in different forums. The Special Rapporteur also reflects on issues around accountability for those human rights violations, which should be addressed at an early stage, and on current efforts by the international community to address the human rights situation in the Democratic People's Republic of Korea in general.

3. The Special Rapporteur wishes to highlight from the outset that in March and again in June 2015 he requested meetings with delegates from the Democratic People's Republic of Korea to follow up on the discussions that he had with them in October 2014 in New York. He regrets that his requests were declined. He firmly believes in the value of dialogue and hopes that the authorities will answer his future request positively.

4. Finally, the Special Rapporteur thanks all those who took the time to meet him in various places during the past year.

II. Latest developments

A. People trapped inside the country

1. Summary executions

5. In 2015, at the time of writing, the Supreme Leader of the Democratic People's Republic of Korea had ordered the executions of 15 individuals, by firing squad, on spying charges. Those executed reportedly include a forestry minister and another top official who challenged the Supreme Leader over his policies, as well as members of an orchestra. Reportedly, 1,382 persons were publicly executed between 2010 and 2014 (161 persons in 2008, 160 in 2009, 106 in 2010, 131 in 2011, 21 in 2012, 82 in 2013 and 5 in 2014). Reports of the alleged execution of the Defence Minister and of the poisoning of the Supreme Leader's aunt were also received with circumspection.[1]

[1] According to some media, the Government of the Democratic People's Republic of Korea confirmed the execution of the Defence Minister for insubordination. See, for example, www.upi.com/Top_News/World-News/2015/06/15/North-Korea-officially-confirmed-Hyon-Yong-Chols-execution-says-source/3271434354542/?spt=sec&or=tn.

6. The latest reported summary executions should be seen as part of a pattern of multiple executions of officials considered by the Supreme Leader as a threat to his rule since he took power in December 2011. According to sources, 31 officials were executed in 2014. The most notable case was the execution in December 2013 of the Supreme Leader's uncle, Jang Song Thaek, reportedly for "anti-party, counter-revolutionary factional acts in a bid to overthrow the leadership".

7. The Special Rapporteur reiterates his deep concern about those reported summary executions in total disregard of due process and other international human rights standards. He also reiterates concern about the practice of "guilt by association", whereby associates and family members of a person punished for a political or ideological crime similarly face punishment by being either executed or sent to prison camps.

2. Abductions and enforced disappearances

8. International abductions and enforced disappearances committed by the Government of the Democratic People's Republic of Korea are issues of utmost concern to the Special Rapporteur.

9. In March 2015, as recommended by the commission of inquiry on the situation of human rights in the Democratic People's Republic of Korea, the Special Rapporteur came up with a multitrack strategy aimed at addressing international abductions, enforced disappearances and related matters (A/HRC/28/71, paras. 29-84). The strategy seeks to maintain the momentum that has been built around the issue in the international arena and thus to continue to put pressure on the authorities from the Democratic People's Republic of Korea to resolve the issue to the satisfaction of victims, their families and the international community.

10. On 5 May 2015, the Special Rapporteur attended an international symposium hosted by the Government of Japan in New York on human rights violations, including abductions, by the Democratic People's Republic of Korea. He took part in a similar symposium held in Geneva in September 2014. He found both events particularly useful, as they contributed to maintaining the visibility and international understanding of the issue of international abductions by the Democratic People's Republic of Korea. Furthermore, both events reflected important elements of the aforementioned strategy. In his remarks, the Special Rapporteur highlighted the need for an international approach to the issue, with broad support from the international community and an active role for relatives of abductees and civil society at large in the implementation of the strategy. He pointed out the urgent need to solve the matter once and for all, as the victims who have survived and their families are, for the most part, well advanced in their years.

11. During his latest visit to Tokyo, in January 2015, the Special Rapporteur was informed that the national police agency was currently looking into 881 possible abduction cases relating to the Democratic People's Republic of Korea over the years. He was briefed on the latest developments in relation to the bilateral dialogue on the issue of abductions that started in 2014 between the Governments of the Democratic People's Republic of Korea and Japan. In October 2014, a delegation of senior Japanese officials travelled to Pyongyang to be apprised of the latest information in relation to the survey undertaken. However, the meeting was reported to have been unsatisfactory. At the time of writing, there was reportedly no progress on the part of the Democratic People's Republic of Korea in presenting a report on

the outcome of its survey, due by July 2015. Early in July 2015, the Democratic People's Republic of Korea informed Japan that it had been sincerely conducting comprehensive investigations on all Japanese nationals but that they would take a little longer, to which the latter in return urged the former to resolve all issues related to the Japanese nationals, including the return of all the victims of abductions, through expeditious investigations in accordance with the agreement in May 2014. The Special Rapporteur welcomes the important work that the Working Group on Enforced or Involuntary Disappearances has been undertaking over the years in tackling cases of abductions and disappearances allegedly committed by the Democratic People's Republic of Korea. In March 2015, during its 105th session, the Working Group brought four cases to the attention of the Government of the Democratic People's Republic of Korea, with regard to the situation of Mr. Kim Hyun Chul, Mr. Kim Hyun Il, Ms. Kim Hyun Ran and Mr. Kim Il Hyun, who were reportedly last seen in January 2011 at the Ranam-guyok security agency in Chongjin, North Hamkyung Province (A/HRC/WGEID/105/1, para. 36). The Special Rapporteur hopes that the Government will shed full light on those cases.

12. On 5 August 2014, the Government of the Democratic People's Republic of Korea wrote to the Working Group with regard to 27 outstanding cases. The Working Group deemed insufficient the information provided to clarify those cases (A/HRC/WGEID/104/1, para. 50).

13. The Special Rapporteur welcomes the country request issued by the Working Group on Enforced or Involuntary Disappearances on 22 May 2015 to visit the Democratic People's Republic of Korea (pursuant to his recommendation). The Special Rapporteur urges the Government of the Democratic People's Republic of Korea to respond positively to that request without delay.

3. Arbitrary detention

14. The Special Rapporteur continues to be deeply preoccupied by the ongoing arbitrary detention and acts of torture and ill-treatment of individuals in prison camps, as documented by the commission of inquiry (A/HRC/25/63, paras. 56-63). It is estimated that the Democratic People's Republic of Korea holds 80,000 to 120,000 political prisoners in five prison camps located in remote areas of the country, namely Camp Nos. 14, 15, 16, 18 and 25.[2]

15. The Special Rapporteur voices concerns about the ongoing detention of four individuals from the Republic of Korea (Kim Jeong-wook, Kim Kuk-gi, Choi Chun-gil and Joo Won-moon) who reportedly do not have access to their families or to government officials, despite several requests made by the Government of the Republic of Korea.

16. An additional testimony on detention conditions in Political Prison Camp No. 15 in Yodok was brought to the attention of the Special Rapporteur in July 2015 through a former inmate who was detained in the Seorimcheon district of the camp, known as the "revolutionizing" or "re-education" zone, from 2000 to 2003.[3] The

[2] Korean Institute for National Unification, white paper on human rights in North Korea (2015) (Korean version).

[3] The report was submitted to the Office of the United Nations High Commissioner for Human Rights (OHCHR) office in Seoul through the International Coalition to Stop Crimes against Humanity in North Korea.

account reinforces the evidence collected by the commission of inquiry on the systematic practice of torture and the appalling conditions of detention. It reconstitutes a list of 181 names out of approximately 400 prisoners who the witness believes were detained at that time, including the incumbent Minister of Information, Shim Cheol-Ho. The report states that the camp may have been dismantled in May 2015, possibly in reaction to the commission of inquiry's report, but the fate of the guards and inmates is unknown.

17. The Special Rapporteur recalls the human rights norms and standards governing deprivation of liberty, including articles 7 and 9 of the International Covenant on Civil and Political Rights, which the Democratic People's Republic of Korea ratified in 1981, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Standard Minimum Rules for the Treatment of Prisoners.

18. The Special Rapporteur welcomes the country request issued on 17 April 2015 by the Working Group on Arbitrary Detention to the Government of the Democratic People's Republic of Korea to visit the country. At the time of writing, a response to that request had not been received. Previously, the Working Group adopted several opinions under its regular communication procedure. In November 2013, it adopted opinion Nos. 34/2013 to 36/2013, concerning the detention of groups of individuals. In all three cases, the Working Group ruled the detention and deprivation of liberty to be arbitrary.

4. Persons with disabilities

19. The Special Rapporteur welcomes the statement by the Republic of Korea in May 2015 that it will provide 1 billion won ($917,000) to support persons with disabilities from the Democratic People's Republic of Korea.[4]

20. At the time of writing, the Government of the Democratic People's Republic of Korea had signed the Convention on the Rights of Persons with Disabilities[5] and accepted recommendations from the universal periodic review to expedite the ratification of the Convention (A/HRC/27/10, paras. 124.15-124.16). The Government had also accepted a number of other specific recommendations from the review concerning the rights of persons with disabilities (A/HRC/13/13; para. 90.98; A/HRC/27/10, paras. 124.31 and 124.178-124.179).

21. Despite a few encouraging signs that some measures may have been taken to improve the situation of persons with disabilities following the signature of the Convention on the Rights of Persons with Disabilities, including the promise of free medical care and specialized education, the ratification of the Convention has yet to be undertaken. In that regard, the Special Rapporteur calls upon the Democratic People's Republic of Korea to expedite that process and to accept offers of technical assistance on the matter.

22. The Special Rapporteur encourages the Special Rapporteur on the rights of persons with disabilities to request an invitation to visit the Democratic People's Republic of Korea, notably to closely examine the issue of disability-based

[4] "S. Korea to offer 1 bln to support handicapped in N. Korea", *The Korea Herald*, 19 May 2015. Available from www.koreaherald.com/view.php?ud=20150519001217.

[5] The Democratic People's Republic of Korea signed the Convention on the Rights of Persons with Disabilities on 3 July 2013.

discrimination, which was highlighted in the commission of inquiry's report as a continuing violation. Allegations on the possible use of persons with disabilities in medical testing, forced relocation to rural areas, and separation of children with disabilities from their parents deserve urgent attention.

23. The Special Rapporteur notes the lack of support by the international donor community and aid agencies to disability projects in the Democratic People's Republic of Korea, which further marginalizes persons with disabilities and increases their isolation and rejection by society. As pointed out by recent academic research on the matter,[6] international donors' decreased commitment to the Democratic People's Republic of Korea due to its poor human rights record has reduced opportunities for the Government and for disabled persons' organizations to benefit from international expertise and best practices in disability programmes. The Special Rapporteur recognizes the need for international donors working with the Democratic People's Republic of Korea to adopt a rights-based approach to humanitarian aid in general and to disability in particular.

B. People working outside the country

24. While the Special Rapporteur was on mission in the Republic of Korea in November 2014, his attention was drawn to the issue of nationals of the Democratic People's Republic of Korea being sent abroad by their Government to work under conditions that reportedly amount to forced labour.

25. The rationale behind that State-sponsored system appears to be to circumvent United Nations sanctions imposed on the country with a view to earning currencies. It is believed that the Government of the Democratic People's Republic of Korea earns through that system between $1.2 billion and $2.3 billion per year.[7]

26. According to various studies, it is estimated that more than 50,000 workers from the Democratic People's Republic of Korea operate abroad.[8] The vast majority are currently employed in China and the Russian Federation. Other countries where workers operate reportedly include Algeria, Angola, Cambodia, Equatorial Guinea, Ethiopia, Kuwait, Libya, Malaysia, Mongolia, Myanmar, Nigeria, Oman, Poland, Qatar and the United Arab Emirates.

27. The overseas workers are employed mainly in the mining, logging, textile and construction industries. Their conditions of work have been documented by civil society organizations[7,8] that conducted interviews with former overseas workers. They found that:

(a) The workers do not know the details of their employment contract;

[6] Katharina Zellweger, *People with Disabilities in a Changing North Korea* (Stanford, The Walter H. Shorenstein Asia-Pacific Research Centre, 2014). Available from http://fsi.stanford.edu/sites/default/files/Zellweger_Disabilities_DPRK_web.pdf.

[7] International Network for the Human Rights of North Korean Overseas Labour, "The conditions of North Korean overseas labour" (2012). Available from http://en.nksc.co.kr/wp-content/uploads/2014/08/INHL.pdf.

[8] Ibid. See also Shin Chang-Hoon and Go Myong-Hyun, *Beyond the UN COI Report on Human Rights in DPRK* (Asan Institute for Policy Studies, 2014). Available from http://en.asaninst.org/contents/asan-report-beyond-the-coi-dprk-human-rights-report.

(b) Tasks are assigned according to the worker's State-assigned social class (*songbun*): the lower classes are reportedly assigned the most dangerous and tedious tasks. Workers with relatives in the country are preferred, to ensure that they will fully comply while abroad;

(c) Workers earn on average between $120 and $150 per month, while employers in fact pay significantly higher amounts to the Government of the Democratic People's Republic of Korea (employers deposit the salaries of the workers in accounts controlled by companies from the Democratic People's Republic of Korea);

(d) Workers are forced to work sometimes up to 20 hours per day, with only one or two rest days per month. In some instances, if they do not fulfil the monthly quota imposed, they reportedly do not get paid;

(e) Health and safety measures are often inadequate. Safety accidents are reportedly not reported to local authorities but handled by security agents;

(f) Workers are given insufficient daily food rations;

(g) Freedom of movement of overseas workers is unduly restricted. Workers are under constant surveillance by security personnel from the Democratic People's Republic of Korea in charge of ensuring that they comply with the Government's rules and regulations. Those agents confiscate the workers' passports. The workers are also forbidden to return to the Democratic People's Republic of Korea during their assignment;

(h) Workers are threatened with repatriation if they do not perform well enough or commit infractions. Defectors apprehended are sent back to the Democratic People's Republic of Korea.

28. It is alleged that the host authorities never monitor the working conditions of overseas workers.

29. It is worth noting that the Government of the Democratic People's Republic of Korea is paying increased attention to the scrutiny by foreign media and organizations on its overseas workers. In April 2015, it issued instructions to overseas workers and supervisors to prevent anyone from reporting human rights abuses in the workplace. Workers and supervisors have reportedly been ordered to destroy any recording equipment, confiscate the memory cards and even assault the person documenting the abuses. Failure to do so would result in the worker or supervisor being punished, although it is not clear what type of punishment would be applied.[9]

30. The Special Rapporteur notes (with satisfaction) the decision in May 2015 of a construction company in Qatar to dismiss 90 employees from the Democratic People's Republic of Korea (nearly half of the workforce employed) for alleged repeated violations of domestic labour legislation. According to the company, "supervisors responsible for the well-being of their workers have been continuously forcing them to work more than 12 hours a day. The food provided to their workforce is below standards. Site health and safety procedures are ignored

[9] Radio Free Asia, "North Korea orders its overseas workers to hide rights abuses", 17 April 2015. Available from www.rfa.org/english/news/korea/authorities-order-overseas-workers-to-hide-rights-abuses-04172015162936.html.

regularly".[10] One of the workers reportedly died as a result of such treatment. The company agreed to keep the remaining workers from the Democratic People's Republic of Korea under the condition that they no longer breach any rules.

31. The Special Rapporteur takes all such reports very seriously. He intends to pay close and sustained attention to the issue in future, with the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR) office in Seoul. To that end, he calls upon the Member States concerned to grant him, his successor and OHCHR staff access to verify all of the allegations.

32. The Special Rapporteur reminds the Democratic People's Republic of Korea of its obligation under article 8 of the International Covenant on Civil and Political Rights not to engage in forced labour. He stresses that companies hiring overseas workers from the Democratic People's Republic of Korea become complicit in an unacceptable system of forced labour. They should report any abuses to the local authorities, which have the obligation to investigate thoroughly, and end such partnership.

33. Finally, the Special Rapporteur encourages the Special Rapporteur on contemporary forms of slavery, including its causes and its consequences, to pay attention to the issue and to request to visit the country.

C. People fleeing the country

1. Defectors settling abroad and refoulement cases

34. According to the Ministry of Unification of the Republic of Korea, in 2014, 1,396 individuals from the Democratic People's Republic of Korea (1,092 women and 304 men) defected to the Republic of Korea. Between January and March 2015, 292 defectors arrived in the Republic of Korea: 241 women and 51 men. As at March 2015, there were 27,810 defectors in the Republic of Korea: 19,508 women and 8,302 men.[11]

35. However, defectors continue to face considerable risks in their attempt to seek asylum abroad. The Special Rapporteur remains concerned about repeated instances of refoulement to the country of origin by certain Member States of nationals of the Democratic People's Republic of Korea, who, in their attempt to flee the country, had entered those States' territories.

36. In that regard, the Special Rapporteur is strongly concerned by reports indicating that a group of 29 citizens of the Democratic People's Republic of Korea, including a 1-year-old child, were detained by the Chinese authorities in Shandong and Yunnan provinces between 15 and 17 July 2014 and subsequently forcibly returned to their country of origin.[12] Their whereabouts were unknown at the time of writing. In addition, in October 2014, the Chinese authorities reportedly arrested 11 individuals (10 adults and 1 child aged 7) from the Democratic People's Republic

[10] Voice of America, "Qatari company fires almost half its North Korean workforce", 7 May 2015. Available from www.insidevoa.com/content/voa-report-qatari-company-fires-almost-half-its-north-korean-workforce/2753918.html.

[11] Statistics obtained from the website of the Ministry of Unification of the Republic of Korea.

[12] Amnesty International, "Urgent action: families face forcible return to North Korea", 28 July 2014. Available from www.amnesty.org/en/documents/asa17/039/2014/en.

of Korea who were seeking to enter Myanmar in the southern region of Yunnan province.[13] Their whereabouts are also unknown.

37. The Special Rapporteur notes that the Committee against Torture included that case in its list of issues in relation to the fifth periodic report of China. It sought information about their fate upon return and enquired, inter alia, whether there were "post-return monitoring arrangements in place to ensure that those returned to the Democratic People's Republic of Korea are protected from the danger of being subjected to torture" (CAT/C/CHN/Q/5/Add.1, para. 9). He hopes that the Government of China will clarify the matter during the fifty-sixth session of the Committee, in November 2015.

38. The Special Rapporteur regrets that his requests to meet representatives of the Permanent Missions of China in Geneva and New York in March and May 2015, respectively, were unsuccessful. He remains available to engage in constructive dialogue with the Government of China to find a sustainable solution to that pressing issue.

39. According to reports, on 2 December 2014 two orphans who had defected from the Democratic People's Republic of Korea and had been forcibly returned by the Lao People's Democratic Republic in May 2013 were executed, while seven other orphans who had similarly defected were detained at Camp No. 14, located in Gaecheon-gun, Pyongan Namdo. The Special Rapporteur finds those reports deeply troubling.

40. The Special Rapporteur recalls that Member States to which defectors appeal for refuge and protection are under an international obligation not to return such individuals where the return would give raise to a real risk of irreparable harm, such as a threat to the right to life or a violation of the prohibition of torture.

2. Trafficking

41. The Special Rapporteur notes with great concern from the data provided by the Ministry of Unification on arrivals of defectors in the Republic of Korea that more than 70 per cent of the defectors are women. A striking estimate of 70-90 per cent of those women reportedly become victims of human trafficking and are subjected to, inter alia, forced marriage and sexual exploitation in China and in other Asian countries.[14] They are particularly vulnerable to actions by smuggling gangs, whose influence has significantly increased recently owing to the clampdown by Chinese authorities on charities and evangelical groups from the Republic of Korea that used to facilitate their escape through China.[15]

42. Female overseas workers from the Democratic People's Republic of Korea sent to China have also fallen victim to sexual exploitation. It was reported that, in

[13] Yonhap News Agency, "11 N. Korean defectors arrested in China", 31 October 2014. Available from http://english.yonhapnews.co.kr/national/2014/10/31/59/0301000000AEN20141031004300315F.html.

[14] Olivia Enos, "Human trafficking thrives where rule of law ends", *The Diplomat*, 16 March 2015. Available from http://thediplomat.com/2015/03/human-trafficking-thrives-where-rule-of-law-ends.

[15] David McKenzie, "Chinese 'snakehead' gangs offer only escape for North Korea's defectors", CNN, 19 November 2014. Available from http://edition.cnn.com/2014/11/19/world/asia/china-north-korea-defector-escape-mckenzie.

June 2014, the Government of China deported a group of female workers in a food factory because they were forced into prostitution at night, upon instructions from an executive of the factory and with the complicity of the security personnel from the Democratic People's Republic of Korea in charge of their surveillance. The latter was also forcibly repatriated.[16]

43. The Special Rapporteur stands ready to look at the above-mentioned situation in close cooperation with the States concerned and other United Nations human rights mechanisms, including the Special Rapporteur on trafficking in persons, especially women and children. The Special Rapporteur encourages China to consider accepting the request for a country visit made by the Special Rapporteur on trafficking in persons, especially women and children, in 2010.[17]

D. People-to-people contact

1. Separated families

44. The issue of separated families is of particular concern to the Special Rapporteur. According to the Korean Assembly for Reunion of Ten Million Separated Families, as at May 2015, of the 129,668 applicants for the reunions arranged by the Red Cross societies of the Democratic People's Republic of Korea and the Republic of Korea since 2000, only 1,956 had benefited from face-to-face meetings and 279 from video reunions. This represents 1.5 per cent and 0.2 per cent, respectively, of the total number of applicants. Most strikingly, nearly half of the applicants (62,028) have passed away during the past 15 years owing to their advanced age. The Special Rapporteur finds the situation very disconcerting and sincerely hopes that regular family reunions will resume without delay.

45. The Special Rapporteur deems it necessary to remind the Democratic People's Republic of Korea of its position, indicated prior to the second cycle of the universal periodic review, that it accepted a number of recommendations pertaining to the issue of separated families that had been made during the first review, in December 2009, namely: "guarantee separated families' fundamental right to know the fate of their family members across the border and to communicate and regularly meet together; do everything possible, in cooperation with the Republic of Korea, to ensure that the maximum number of meetings of separated families is organized; take concrete steps to continue the process of family reunification, because for the elder generation even a delay of one or two years means that their chance of seeing their relatives may be lost forever; [and] adopt measures to facilitate family reunification as recommended by the Special Rapporteur" (A/HRC/13/13, paras. 90.75-90.78).

2. Inter-Korean dialogue on issues of mutual interest

46. The Special Rapporteur regrets that there has been no progress on the inter-Korean dialogue, despite the statements made by both Governments in late 2014 and early in 2015 to resume such dialogue on issues of mutual interest. The date 15 June 2015 marked the fifteenth anniversary of the North-South Joint Declaration, by

[16] Radio Free Asia, "China deports North Korean workers forced into sex trade", 12 June 2014. Available from www.rfa.org/english/news/korea/deportation-06122014162010.html.

[17] See www.ohchr.org/EN/Issues/Trafficking/Pages/Visits.aspx.

which the Governments of the Democratic People's Republic of Korea and the Republic of Korea committed to making joint efforts towards reunification and to enhancing economic and cultural exchanges. It is regrettable that the Government of the Democratic People's Republic of Korea declined the proposals made by the Government of the Republic of Korea to engage in inter-Korean talks in the context of that important anniversary.

47. The Special Rapporteur cannot stress enough the importance of holding genuine dialogue and increased contact between people of both Koreas, in line with the commission of inquiry's recommendations (A/HRC/25/63, paras. 91-92). He welcomes the fact that the Government of the Republic of Korea has indicated that it will continue to provide humanitarian assistance to the people of the Democratic People's Republic of Korea regardless of any political and security issues. He also welcomes the slight increase in non-governmental exchanges on the humanitarian situation, which must be sustained.

48. The Special Rapporteur commends the efforts of the Secretary-General to continue supporting the dialogue and reconciliation between the Democratic People's Republic of Korea and the Republic of Korea. In that connection, he regrets that the Government of the Democratic People's Republic of Korea abruptly reversed its decision for the Secretary-General to visit the Kaesong Industrial Complex in May 2015 without providing any explanation. He finds that decision very unfortunate.

III. Pursuing the accountability track

49. The Special Rapporteur remains convinced that the accountability track must be pursued urgently, in parallel with sustained efforts to seek engagement with the Democratic People's Republic of Korea. It is an irreversible process that the authorities will have to face sooner or later.

50. In his view, issues around accountability should be addressed at an early stage and with long-term strategies in mind. A process of reflection and discussion on possible accountability mechanisms and processes should start as soon as possible. This should not be done, as in previous instances with other countries, at the last minute of a change process.

51. The Special Rapporteur remains convinced that the Security Council should refer the situation in the Democratic People's Republic of Korea to the International Criminal Court, as recommended by the commission of inquiry and subsequently encouraged by the General Assembly (A/HRC/25/63, para. 94 (a), and General Assembly resolution 69/188, para. 8). The evidence and documentation gathered by the commission of inquiry and future investigations of the OHCHR office in Seoul would be of particular relevance and value to the prosecutor's work.

52. In the event that the International Criminal Court is seized of the matter, it will not seek to prosecute a large number of alleged perpetrators. To that end, the Special Rapporteur is of the opinion that a group of experts should meet to discuss a future accountability mechanism for violations committed by the Democratic People's Republic of Korea. The establishment of an ad hoc international tribunal for the Democratic People's Republic of Korea by the United Nations, as proposed by the

commission of inquiry (A/HRC/25/63, para. 87, and A/HRC/25/CRP.1, para. 1201), is one option to consider.

53. A key endeavour to lay the ground for achieving accountability is the mapping of perpetrators of (grave) human rights violations and the chain of command. It is of utmost importance that an analysis of the full structure/architecture of the regime, with the functions and role of the main officials and units, be prepared. The OHCHR office in Seoul can play an important role in that regard and contribute to that important task.

54. In that context, the Special Rapporteur recalls the principle of command and superior responsibility under international criminal law, whereby military commanders and civil superiors can incur personal criminal responsibility for failing to prevent and repress crimes against humanity committed by persons under their effective control.

55. In addition to a possible referral to the International Criminal Court, the Security Council, as encouraged by the General Assembly, should consider the scope for effective targeted sanctions against those who appear to be most responsible for acts that the commission deemed to constitute crimes against humanity. While the Council has yet to consider taking action on the matter, the Special Rapporteur welcomes the steps that some Member States have begun to take on a bilateral basis in that direction.

56. The Special Rapporteur recalls that another important avenue for achieving accountability is the exercise by Member States of universal jurisdiction in the event that any relevant individuals suspected of having committed human rights violations fall under their jurisdiction, in which case, in accordance with their national legal provisions, they will have to investigate and prosecute such individuals.

57. Furthermore, in the event that the two Koreas reunite one day, the peace and reconciliation process that would ensue should not overlook the importance of justice and accountability for past human rights violations. The Special Rapporteur underscores that any transitional justice process should seek the truth and ensure accountability and redress for the victims, in parallel with the work of an international accountability mechanism. In that regard, the evidence and documentation gathered by the commission of inquiry and the OHCHR office in Seoul will again prove most pertinent.

58. In that connection, the Special Rapporteur wishes to echo the recommendation made by the commission of inquiry that "urgent accountability measures should be combined with a reinforced human rights dialogue, the promotion of incremental change through more people-to-people contact and an inter-Korean agenda for reconciliation" (A/HRC/25/63, para. 87).

59. Finally, the Special Rapporteur calls upon Member States to continue the discussion on the issue of accountability and to consider including a reference in the forthcoming resolution of the General Assembly to the question of options for the prosecution of specific crimes, such as abduction, and the identification of key elements of a comprehensive prosecution strategy for the future, as well as exploring the different possible options available to secure justice and accountability mechanisms to address such crimes, and an in-depth mapping of the institutions and individuals responsible for the development and implementation of

policies leading to the commission of crimes against humanity and of the chain of command structure in the Democratic People's Republic of Korea. He stands ready to report on the issue at a future session of the Assembly.

IV. Efforts by the international community to address the human rights situation in the Democratic People's Republic of Korea

60. The following section must be read in conjunction with the forthcoming report of the Secretary-General on the situation of human rights in the Democratic People's Republic of Korea.

A. Action by the Security Council and latest Human Rights Council resolution

61. In December 2014, the General Assembly adopted with an overwhelming majority a landmark resolution on the situation of human rights in the Democratic People's Republic of Korea, paving the way for the consideration of the situation in the country by the Security Council, including a possible referral of the situation to the International Criminal Court. In late December, the Council met to discuss the situation, with considerable focus on the issue of abductions, and is expected to revisit the agenda on a regular basis in future. The Special Rapporteur looks forward to the next meeting on the matter in 2015 and reiterates his availability to brief the Council himself on human rights developments in the Democratic People's Republic of Korea.

62. In March 2015, the Human Rights Council adopted resolution 28/22, in which it extended the mandate of the Special Rapporteur for one year. It also renewed its condemnation in the strongest terms of the systematic, widespread and gross human rights violations and other human rights abuses committed in the Democratic People's Republic of Korea; welcomed the Security Council's decision to add the situation in the Democratic People's Republic of Korea to its agenda and the holding of a Council debate thereon on 22 December 2014; and requested OHCHR to present an oral update at the thirtieth session and a comprehensive report on its role and achievements, including its field-based structure, at the thirty-first session. It also acknowledged the Special Rapporteur's dialogue with representatives of the Democratic People's Republic of Korea in New York in October 2014 and urged the country through continuous dialogue to invite and cooperate fully with the Special Rapporteur, with unrestricted access to visit the country, and to promote technical cooperation with OHCHR. Furthermore, it decided to convene a panel discussion on the situation of human rights in the Democratic People's Republic of Korea, including the issue of international abductions, enforced disappearances and related matters, at its thirtieth session, in September 2015.

63. The Special Rapporteur welcomes those developments, as they present new opportunities to exert further pressure and maintain momentum on the human rights situation in the Democratic People's Republic of Korea.

B. Update on the establishment of the Office of the United Nations High Commissioner for Human Rights office in Seoul

64. The Special Rapporteur welcomes the opening of the OHCHR office in Seoul on 23 June 2015. He looks forward to the important work of the office to support his mandate, as provided by Human Rights Council resolution 25/25. He calls again upon the General Assembly to ensure that it can function with independence, has sufficient resources and is not subjected to reprisals or threats.

65. In relation to the third point, the Special Rapporteur notes with deep concern the series of threats issued by the authorities and media of the Democratic People's Republic of Korea against the Seoul office. On 23 June 2015, the Ministry of Foreign Affairs of the Democratic People's Republic of Korea issued a statement accusing the "hostile forces" in the international community led by the United States of America of using the field presence to plot against the Democratic People's Republic of Korea and "incite confrontation under the pretext of protecting human rights". On 30 March 2015, the Pyongyang Committee for the Peaceful Reunification of Korea released a statement threatening an attack against the then forthcoming office and accusing the Republic of Korea and the United States of orchestrating a human rights plot against the Democratic People's Republic of Korea. The statement specifically said: "we will never sit back and watch as South Korea hosts the United Nations office on human rights of DPRK in Seoul. As soon as the nest for an anti-DPRK (North Korea) smear campaign is in place in the South, it will immediately become the first target for our merciless punishment." In May 2015, the newspaper *Minju Joson* stated that "[the Democratic People's Republic of Korea] will never pardon but mercilessly punish those hell-bent on the anti-DPRK 'human rights' racket, whether they are the puppet forces or their masters or those going under the mask of any international body".[18]

66. This is not the first time that the Democratic People's Republic of Korea has issued a threat. On 9 June 2014, a spokesperson for the Pyongyang Committee for the Peaceful Reunification of Korea released a statement protesting against the OHCHR field office in the Republic of Korea, threatening punishment and attacks at those involved in the plan, as well as staff in the office, referring to the plan as a scheme led by the United States and the Republic of Korea.

67. The Special Rapporteur urges the authorities of the Democratic People's Republic of Korea to cease issuing such threats. He believes that it is totally unacceptable for the Government of a United Nations Member State to issue a statement that blatantly threatens punishment and attacks on a United Nations office and its staff members. He stresses that the Democratic People's Republic of Korea, as a member of the United Nations, has a responsibility under the Charter of the United Nations to protect the United Nations, its staff and its assets.

[18] *Minju Joson*, "DPRK will mercilessly punish those keen on 'human rights' racket against it", 13 May 2015.

C. Technical cooperation with the Democratic People's Republic of Korea

68. The Special Rapporteur regrets that the Democratic People's Republic of Korea has yet to resume dialogue on technical cooperation with OHCHR, despite the continued efforts of the latter to engage the Government. Pyongyang suspended dialogue in December 2014 on the eve of the Security Council meeting on the situation in the country. He hopes that the Government will respond positively to OHCHR efforts, with a view to improving the people's enjoyment of human rights in the Democratic People's Republic of Korea.

69. The Special Rapporteur stresses again that dialogue should not be linked to any political considerations but should be undertaken with a view to the implementation of the country's international human rights obligations, including the commitments made during the universal periodic review. He hopes that the Government will change its position and grant the office access to the country to assess the needs on the ground and explore with the Government possible avenues for substantive and meaningful cooperation.

70. The Special Rapporteur believes that it is first and foremost in the interest of the Democratic People's Republic of Korea, and ultimately for the sake of its own people, to engage with the international community in a real and meaningful manner.

D. Human Rights Council panel discussion

71. At the time of writing, OHCHR was preparing, pursuant to Human Rights Council resolution 28/22, a panel discussion on the Democratic People's Republic of Korea, including the issue of international abductions, enforced disappearances and related matters, to be held during the thirtieth session of the Council, in September 2015. The Special Rapporteur looks forward to a fruitful discussion and hopes that the panel will inform ways and means to further address the human rights situation in the country.

E. Special Rapporteur's meetings with United Nations leadership

72. In May 2015, the Special Rapporteur met in New York with, inter alia, the Secretary-General, the Assistant Secretary-General for Human Rights and the Assistant Secretary-General for Political Affairs. He welcomes the willingness expressed by all interlocutors to continue seeking engagement with the Democratic People's Republic of Korea. The Special Rapporteur was briefed on the steps taken by the United Nations system under the Human Rights Up Front framework, which he found encouraging. He requested regular updates on developments within the framework, to which his interlocutors kindly agreed.

73. The Special Rapporteur wishes to recall that the recommendations accepted by the Democratic People's Republic of Korea during the two universal periodic reviews remain particularly relevant for creating opportunities for engagement by all parties concerned, including United Nations agencies.

F. Human rights contact group

74. The Special Rapporteur remains convinced that concerted action by a committed group of Member States to engage the Democratic People's Republic of Korea on issues of concern pertaining to the human rights situation in the country can make a significant difference.

75. In March and June 2015, the Special Rapporteur met bilaterally in Geneva with a number of permanent representatives of Member States to seek the establishment of a human rights contact group, as recommended by the commission of inquiry, with a view to engaging directly with the Democratic People's Republic of Korea on a number of issues of concern.

76. The Special Rapporteur is pleased to report initial positive responses. He continues to help to facilitate the group's formation and looks forward to further updates. Once it is established, he hopes that the Democratic People's Republic of Korea will engage meaningfully with the group to make tangible progress on the human rights situation.

V. Conclusion and recommendations

77. **More than ever, the international community should stay the course in its efforts to address the human rights situation in the Democratic People's Republic of Korea profoundly and meaningfully. Victims and their relatives, both inside and outside the country, have suffered for far too long, and their demands for justice and accountability cannot go unheeded.**

78. **The Special Rapporteur continues to advocate the pursuance of a two-track strategy with respect to the situation of human rights in the Democratic People's Republic of Korea: efforts must be undertaken to ensure the accountability of those responsible for human rights violations, including through referral by the Security Council of the situation in the country to the International Criminal Court, while continuously seeking engagement with the authorities to bring relief to the people of the Democratic People's Republic of Korea.**

79. **In that regard, the Special Rapporteur wishes to make the following series of recommendations.**

80. **The Special Rapporteur calls upon the General Assembly to:**

(a) **Reiterate its condemnation of the long-standing and ongoing systematic, widespread and gross violations of human rights committed by the Government of the Democratic People's Republic of Korea;**

(b) **Reaffirm the responsibility of the international community to protect the people of the Democratic People's Republic of Korea and victims abroad from crimes against humanity, in view of the manifest failure of the Democratic People's Republic of Korea to protect its own population from such crimes;**

(c) **Condemn in the strongest terms the threats made by the Government of the Democratic People's Republic of Korea against the OHCHR office in Seoul and its staff members and ensure that the office can continue functioning with independence and sufficient resources;**

(d) Urge the Government of the Democratic People's Republic of Korea to invite the Special Rapporteur to undertake a fully fledged visit to the country as soon as possible and without any preconditions, in accordance with the terms of reference for country visits by special procedures mandate holders (see E/CN.4/1998/45), and more generally to cooperate with his mandate;

(e) Consider including a reference in its forthcoming resolution to the question of options for the prosecution of specific crimes, such as abduction, and the identification of key elements of a comprehensive prosecution strategy for the future, as well as exploring the different possible options available to secure justice and accountability mechanisms to address such crimes, and an in-depth mapping of the institutions and individuals responsible for the development and implementation of policies leading to the commission of crimes against humanity and of the chain of command structure in the Democratic People's Republic of Korea.

81. **The Special Rapporteur urges the Government of the Democratic People's Republic of Korea to:**

(a) Immediately halt all the human rights violations identified by the commission of inquiry in its report, which continue to this day, and by the Special Rapporteur in the present report;

(b) Abide by all the international human rights instruments that it has ratified;

(c) Take progressive steps to restrict or abolish the death penalty, notably by amending national legislation to ensure compliance with international law, specifically to restrict the application of the death penalty to crimes of intentional killing only and to ensure that all trials meet the highest standards of fairness;

(d) Dismantle all political prison camps and release and rehabilitate all political prisoners, with appropriate international verification and assistance;

(e) Allow all persons who have been abducted or forcibly disappeared, as well as their descendants, to return immediately to their countries of origin, and to expedite investigations into the fate of those missing in a transparent and verifiable manner;

(f) Allow separated families to reunite without delay and use unmonitored communication facilities, such as telephone, mail and e-mail;

(g) Expedite the ratification of the Convention on the Rights of Persons with Disabilities;

(h) Become a member of the International Labour Organization and abide by all the relevant conventions;

(i) Protect victims of human trafficking, particularly the women workers that it sends to other countries, and guarantee their physical safety;

(j) Resume dialogue with OHCHR on technical cooperation without delay;

(k) Cooperate with the United Nations human rights mechanisms, including the mandate of the Special Rapporteur, notably by granting them

access to the country and by presenting overdue reports to the relevant treaty bodies;

(l) Implement the recommendations accepted during the first and second cycles of the universal periodic review and allow access to stakeholders to verify their implementation;

(m) Engage genuinely in bilateral talks with the Republic of Korea in the context of the inter-Korean dialogue on issues of mutual interest (including the issue of separated families) and with Japan on the issue of abductions and abide by the terms of bilateral agreements concluded, first and foremost in the interest of the victims and their families.

82. The Special Rapporteur calls upon Member States to:

(a) Continue ensuring that the Security Council holds regular briefings on the situation in the Democratic People's Republic of Korea, with the participation of the High Commissioner for Human Rights and other relevant experts, including the Special Rapporteur;

(b) Take further steps towards achieving accountability on the part of those responsible for serious human rights violations in the Democratic People's Republic of Korea, including through referral by the Security Council of the situation in the country to the International Criminal Court and by making use of the principle of universal jurisdiction to realize and maximize the potential deterrent effect of the findings and recommendations of the commission of inquiry and thus help to protect the population of the Democratic People's Republic of Korea from further crimes against humanity;

(c) Facilitate the work of the OHCHR office in Seoul and the Special Rapporteur and provide them with timely access to relevant information and potential witnesses, especially escapees, who may have information crucial to ensuring institutional and individual accountability;

(d) Engage with the Government of the Democratic People's Republic of Korea to take specific steps to facilitate and verify the implementation of the recommendations accepted during the first and second cycles of the universal periodic review, including in relation to separated families;

(e) Protect the people of the Democratic People's Republic of Korea who have sought refuge in, or are transiting through, a Member State's territory by abiding by the principle of non-refoulement;

(f) Combat the practice of forced labour by the Democratic People's Republic of Korea of overseas workers operating on their territories, including by conducting thorough inspections at worksites on a regular basis and forcefully repatriating those responsible for violations;

(g) Fully involve civil society actors in Member States' efforts to address the situation in the Democratic People's Republic of Korea;

(h) Activate the human rights contact group recommended by the commission of inquiry, with a view to improving the situation of human rights in the Democratic People's Republic of Korea on the ground.

83. The Special Rapporteur calls upon the United Nations system as a whole to continue its efforts to address the grave human rights situation in the Democratic People's Republic of Korea in a coordinated and unified manner, in line with the Secretary-General's Human Rights Up Front strategy.

84. Finally, the Special Rapporteur calls upon civil society to continue its important work in raising awareness of the human rights situation in the Democratic People's Republic of Korea, including by reporting on human rights violations committed by the Government of the Democratic People's Republic of Korea.